

CHAPTER 2. THE FEDERAL AVIATION ADMINISTRATION AND FLIGHT STANDARDS: HISTORY AND ORGANIZATION

SECTION 2. TITLE 49, UNITED STATES CODE

63. THE FEDERAL AVIATION ACT OF 1958. The Federal Aviation Act (FA Act) was signed into law on August 23, 1958. This public law created the Federal Aviation Administration (FAA) (then called the Federal Aviation Agency) and empowered it to promote flight safety in air commerce by prescribing safety standards. It gave the regulatory authority of aviation functions to two independent agencies: the FAA and the Civil Aeronautics Board (CAB). The CAB retained responsibility for the economic regulation of air carriers and for the investigation of aircraft accidents. On July 5, 1994, the FA Act, along with many other transportation-related statutes, was recodified into Title 49, United States Code (U.S.C.). Section 40101 of Title 49 describes six basic responsibilities of the FAA, which are summarized as follows:

- Regulation of air commerce to best promote its development and safety and to fulfill national defense requirements
- Promotion, encouragement, and development of civil aeronautics
- Control of the use of navigable United States airspace and the regulation of both civil and military operations in that airspace in the interest of the safety and efficiency
- Consolidation of air navigation facility research and development, as well as the installation and operation of those facilities
- Development and operation of a common air traffic control and navigation system for military and civil aircraft
- Providing assistance to law enforcement agencies in the enforcement of laws related to regulation of controlled substances, to the extent consistent with aviation safety

65. EVOLUTION OF AIR COMMERCE SAFETY REGULATION. In Article I, Section 8, of the U. S. Constitution, Congress is given the power to regulate and control interstate commerce. Interstate highway, railway, and water modes of transportation

were regulated before the advent of air transportation. Air transportation was not regulated until the Air Commerce Act of 1926 empowered the Secretary of Commerce to establish the necessary regulatory system to control and regulate air commerce. The initial regulatory system that was established evolved into an organized system of Civil Aviation Regulations (CAR). The CAR were supplemented by corresponding Civil Aviation Manuals (CAM) which contained policies, procedures, and an interpretation of each CAR section. The CAR and CAM became outmoded with the rapid growth of air transportation and with the introduction of turbojet transport category airplanes in the 1950's. Recodification of the CAR began in 1961 and was completed in 1964 with the adoption of the Federal Aviation Regulations (FAR).

67. AVIATION PROMOTION AND REGULATION.

Civil aviation regulation and promotion are clearly identified in Title 49 as major FAA responsibilities. The FAA promotes safe and efficient civil aviation by establishing and maintaining federal airways (including navigation aids (NAVAID)), and by supporting airport development, air traffic control services, and aviation educational programs. The FAA's principal responsibility in regulating aviation is to ensure safety at all levels of aviation activity. In fostering air safety through regulation, the FAA promotes civil aviation and helps to ensure its future. Safety of flight is dependent upon the regulation and enforcement of these regulations. Many other nations use the U.S. FAR as regulatory models for their civil aviation programs.

69. THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB).

The NTSB was established by the Department of Transportation (DOT) Act and was made a part of the DOT on April 1, 1967. The NTSB was given the CAB functions, powers, and duties concerning aviation accident investigations, formulating probable cause of accidents, and making aviation safety improvement recommendations. On April 1, 1975, the NTSB was made an independent agency. By becoming independent of DOT, the NTSB was put in a more objective position for handling evaluations of DOT and FAA actions and officials,

and for formulating safety recommendations. Although FAA personnel do participate in aviation accident investigations conducted by the NTSB, they are not permitted to participate in determining the “probable cause” of any aviation accident investigated by the NTSB. At the request of the NTSB, certain aviation accidents are investigated by the FAA. The facts, conditions, and circumstances of these accidents are reported to the NTSB, and the NTSB determines “probable cause.” Based on accident investigation findings, the NTSB recommends changes in aviation regulations, procedures, and equipment to improve aviation safety.

NOTE: On July 5, 1994, the Public Laws empowering the NTSB to conduct investigations and adjudication of FAA Enforcement and Penalty cases was recodified into Subtitle II of Title 49, U.S.C.

71. TRANSFER OF CAB FUNCTIONS TO DOT.

The Airline Deregulation Act (ADA) was enacted on October 24, 1978. This act expressed the intention of Congress to diminish federal regulation of airline economics. This act abolished the CAB on December 31, 1984. On January 1, 1985, the administrative functions of the CAB were transferred to the Office of the Secretary of Transportation (OST). Included among these administrative functions was the requirement that air carriers be fit, willing, and able to perform as air carriers. Such air carriers must hold economic certificates or an exemption under Title 49 to provide air transportation to the public.

73. FLIGHT STANDARDS SERVICE AND TITLE 49, U.S.C. The FAA regulatory authority to prescribe, revise, and enforce standards is in Title 49, Subtitle VII, Chapter 447, “Safety Regulation.” Subtitle VII is the foundation for the present structure of the Flight Standards Service. The Flight Standards Service is directly responsible for specific sections of Subtitle VII while other sections of Subtitle VII are the responsibility of other FAA offices. The Flight Standards Service, however, has surveillance and enforcement responsibilities related to all sections of Subtitle VII. The more important sections of Subtitle VII are briefly summarized as follows:

A. Section 44701. General Requirements. This section empowers the FAA to promote flight safety for civil aircraft in air commerce. The Administrator has the duty to require minimum standards for governing practices, methods, and procedures to provide for national security and safety in air commerce.

B. Section 44702. Forms of Applications. The FAA is authorized to prescribe the form and content of applications for certificates. The Administrator may

require that these applications be administered under oath.

C. Section 44703. Airman Certificates. The FAA is authorized to issue airman certificates, which specify the capacity in which holders are authorized to serve as airmen.

D. Section 44704. Aircraft Certificates. The FAA is authorized to issue type certificates for aircraft, aircraft engines, and propellers. The Administrator can specify, in regulations, the appliances for which the issuance of type certificates is reasonably required, and can also issue those certificates.

E. Section 44705. Air Carrier Operating Certificates. The FAA is empowered to issue air carrier certificates and to establish minimum safety standards for the operation of the air carrier to whom the certificate is issued.

F. Section 44706. Airport Operating Certificates. The Administrator is authorized to issue or exempt airport operating certificates to airports serving air carriers certificated by DOT and to establish safety standards for the operation of those airports.

G. Section 44707. Air Agency Rating. The FAA is authorized to provide for the examination and rating of air agencies, such as civilian flight schools, repair stations, and other air agencies. The Administrator is also authorized to issue certificates for these flight schools, repair stations, and air agencies.

H. Section 44708. Air Navigation Facility Rating. The FAA is authorized to inspect, classify, and rate the suitability of any air navigation facility available for the use of civil aircraft. The Administrator is also authorized to issue a certificate for any such navigation facility.

I. Section 44709. Reexamination, Amendment, Suspension, and Revocation of Certificates. The FAA may reinspect any aircraft, air carrier, air agency, or component, and may reexamine any airmen holding an FAA certificate. The FAA may also issue orders that amend, modify, suspend, or revoke, in whole or in part, any type of certificate issued. Any person whose certificate is affected by an order of the Administrator under this section may appeal the Secretary’s order to the NTSB.

J. Section 44710. Revocation for Controlled Substance Violations. This section provides that the FAA shall revoke the airman certificate of any airman that is convicted of a felony for violation of a controlled substance law if an aircraft was used to commit the offense or if the individual served as a crewmember of an aircraft in connection with committing the offense.

K. Section 44711. Prohibitions. This section prohibits any person or organization from conducting any air commerce operation unless the person or organization has proper certification and hires personnel who are properly certificated. This section also prohibits persons or organizations from performing any aviation services contrary to regulations prescribed under Subtitle VII.

L. Section 44713. Maintenance of Equipment in Air Transportation. In this section, each air carrier is given the duty to perform inspections, maintenance, overhaul, and repair of all equipment used in air transportation as required by Title 49 and the orders, rules, and regulations of the FAA.

M. Section 44715. Control and Abatement of Aircraft Noise and Sonic Boom. This section provides that the FAA, after consultation with the Secretary of Transportation and the Environmental Protection Agency (EPA), shall prescribe and amend standards and regulations for the measurement of aircraft noise and sonic boom.

75. PRIVATE SECTOR RESPONSIBILITIES.

A. The term “private sector,” when applied to aviation, encompasses all individuals and organizations participating in air commerce. While individuals and organizations such as pilots, mechanics, air carriers, and manufacturers participate directly in air commerce, other individuals and organizations such as vendors, food caterers, travel agents, baggage handlers, and aircraft sales personnel participate indirectly. The FAA, which is part of the “public sector,” has the duty (authorized by Title 49, Subtitle VII, “Aviation Programs”) to establish minimum standards, rules, and national policies to provide adequately for national security and safety in air commerce. This responsibility for aviation safety, however, does not rest entirely with the FAA. Persons or organizations of the “private sector” are also obligated to provide for public safety. All airmen, air carriers, aircraft owners and operators, air agencies, and certain airport operators who qualify for and accept an FAA certificate, assume these “private sector” responsibilities.

B. A major part of air commerce is conducted by “private” persons or organizations engaged in air transportation. These persons or organizations are referred to as air carriers and are involved in the “common carriage” by aircraft, for compensation or hire, of persons, property, or mail. Title 49 requires a classification of safety standards appropriate to the differences between air transportation and other forms of air commerce. Therefore, safety standards applicable to air transportation (air carriers) are more

stringent than standards applicable to persons or organizations not involved in common carriage.

77. AIR CARRIER RESPONSIBILITIES FOR PUBLIC SAFETY.

A. Section 44702(b) of Title 49 specifies, in part, that when prescribing standards and regulations and when issuing certificates, the FAA shall give full consideration to “the duty of an air carrier to provide service with the highest possible degree of safety in the public interest. . .” Title 49 charges the FAA with the responsibility for promulgating and enforcing adequate standards and regulations. At the same time, Title 49 recognizes that the holders of air carrier certificates have a direct responsibility for providing air transportation with the highest possible degree of safety. The meaning of Title 49, § 744702(b), should be clearly understood. It means that this responsibility rests directly with the air carrier, irrespective of any action taken or not taken by an FAA inspector or the FAA.

B. Before certification, the FAA’s objective is to make a factual and legal determination that a prospective certificate holder is willing and able to fulfill its duties as set forth by Title 49 and to comply with the minimum standards and regulations prescribed by the FAA. This objective continues after certification. Title 49, § 44709, specifies that, if a certificate holder fails to comply with the minimum standards and regulations, the FAA may reexamine any certificate holder or appliance. As a result of an inspection, a certificate may be amended, modified, suspended, or revoked, in whole or in part. Additionally, § 44713(b) generally provides that whenever an inspector finds that any aircraft, aircraft engine, propeller, or appliance used or intended to be used by any air carrier in air transportation, is not in condition for safe operation, the inspector shall notify the air carrier, and the product shall not be used in air transportation until the FAA finds that the product has been returned to a safe condition.

C. The following conditions or situations could indicate that an air carrier’s management is unable or unwilling to carry out its duties as set forth by Title 49 (see volume 3, chapter 8, “Air Carrier Management Effectiveness”):

- Repetitive noncompliance with minimum standards and regulations
- Insufficient training programs and guidance
- Lack of concern or enthusiasm on the part of air carrier management for compliance with Title 49 and the FAR
- Lack of operational control of aircraft

- Lack of ensuring the airworthiness of aircraft
- Inaccurate recordkeeping procedures

NOTE: Title 49 and the FAR contain the principle that air carriers holding out services to the public must be held to higher standards than the general aviation community. Inspectors must also be aware of the private rights

of citizens and air carriers. Since public safety and national security are among the FAA's highest priorities, FAA inspectors must be prepared to take action when any air carrier does not, or cannot, fulfill its duty to perform services with the highest possible degree of safety.

78.-80. RESERVED .

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